

Order

Michigan Supreme Court
Lansing, Michigan

Entered: April 17, 2002

Maura D. Corrigan,
Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Robert P. Young, Jr.
Stephen J. Markman,
Justices

1999-50
2000-27

Proposed Amendment of Rules 7.205,
7.210, 7.215, 7.302, and 7.316
of the Michigan Court Rules

On order of the Court, this is to advise that the Court is considering amendments of Rules 7.205, 7.210, 7.215, 7.302, and 7.316 of the Michigan Court Rules. Before determining whether the proposals should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment. The Court welcomes the views of all who wish to address the form or the merits of the proposals or to suggest alternatives. Before adoption or rejection, the proposals will be considered by the Court at a public hearing. Notice of future public hearings will be provided by the Court and posted on the Court's website, www.courts.michigan.gov/supremecourt.

Publication of these proposals does not mean that the Court will issue an order on the subject; nor does it imply probable adoption of the proposals in their present form.

[The present language of Rules 7.205, 7.210, 7.215, 7.302, and 7.316 would be amended as indicated below.]

Rule 7.205 Application for Leave to Appeal

(A) - (E) [Unchanged.]

(F) Late Appeal.

(1) - (2) [Unchanged.]

(3) Except as provided in subrule (F)(4), if an application for leave to appeal is filed more than 12 months after entry of the order or judgment on the merits, leave to appeal may not be granted. The time limit in appeals from orders terminating parental rights is 63 days, as provided by MCR 5.993(C)(1).

(4) [Unchanged.]

(G) [Unchanged.]

Rule 7.210 Record on Appeal

(A) - (G) [Unchanged.]

(H) Return of Record. After the Court of Appeals disposes of an appeal, the Court of Appeals shall promptly send the original record, together with a certified copy of the opinion, judgment, or order entered by the Court of Appeals

(1) to the Clerk of the Supreme Court if an timely application for leave to appeal is filed in the Supreme Court, or

(2) to the clerk of the court or tribunal from which it was received when

(a) the period for an timely application for leave to appeal to the Supreme Court has expired without the filing of an application, and

(b) [Unchanged.]

(I) [Unchanged.]

Rule 7.215 Opinions, Orders, Judgments, and Final Process from Court of Appeals

(A) - (E) [Unchanged.]

(F) Execution and Enforcement.

(1) Routine Issuance. Unless otherwise ordered by the Court of Appeals or the Supreme Court or as otherwise provided by these rules,

(a) the Court of Appeals judgment is effective after the expiration of the time for filing an timely application for leave to appeal to the Supreme Court, or, if such an application is filed, after the disposition of the case by the Supreme Court;

(b) [Unchanged.]

(2) [Unchanged.]

(G) - (I) [Unchanged.]

Rule 7.302 Application for Leave to Appeal

(A) - (B) [Unchanged.]

(C) When to File.

(1) Before Court of Appeals Decision. In an appeal before the Court of Appeals decision, the application must be filed within 42 ~~28~~ days

(a) - (c) [Unchanged.]

(2) Other Appeals. Except as provided in subrule (C)(4), in other appeals the application must be filed within 42 ~~21~~ days

(a) after the Court of Appeals clerk mails notice of an order entered by the Court of Appeals;

(b) after the filing of the opinion appealed from; or

(c) after the Court of Appeals clerk mails notice of an order denying a timely filed motion for rehearing.

However, the time limit is 21 days where the appeal is from an order terminating parental rights.

(3) Later Application. Late applications will not be accepted. A delayed application may be filed, if it is accompanied by an affidavit explaining the delay. However, a delayed application may not be filed more than 56 days after the Court of Appeals decision.

(4) Decisions Remanding for Further Proceedings. If the decision of the Court of Appeals remands the case to a lower court for further proceedings, an application for leave may be filed within 42 ~~21~~ days after

(a) - (b) [Unchanged.]

(5) Effect of Appeal on Decision Remanding Case. If a party appeals a decision which remands for further proceedings as provided in subrule (C)(4)(a), the following provisions apply:

(a) If the Court of Appeals decision is a judgment under MCR 7.215(E)(1), ~~a timely appeal~~ an application for leave to appeal stays proceedings on remand unless the Court of Appeals or the Supreme Court orders otherwise.

(b) [Unchanged.]

(6) [Unchanged.]

(D) Opposing Brief; Cross Appeal.

(1) [Unchanged.]

(2) An application for leave to appeal as cross appellant may be filed with the clerk ~~by the date the appellant's application for leave is noticed for hearing or within 21~~ 28 days after the appellant's application is filed, ~~whichever is later. Late applications will not be accepted.~~ The application must comply with subrule (A).

(E) - (G) [Unchanged.]

Rule 7.316 Miscellaneous Relief Obtainable in Supreme Court

(A) [Unchanged.]

(B) Allowing Act After Expiration of Time. When, under the practice relating to appeals or stay of proceedings, a nonjurisdictional act is required to be done within a designated time, the Supreme Court may at any time, on motion and notice, permit it to be done after the expiration of the period on a showing made to the court that there was good cause for the delay or that it was not due to the culpable negligence of the appellant. The Court will not entertain a motion to file a late application for leave to appeal under MCR 7.302(C)(3) or MCR 7.302(D)(2) or a late motion for reconsideration under MCR 7.313(E).

(C) - (D) [Unchanged.]

Staff Comment: The proposed amendments of MCR 7.205, 7.210, 7.215, 7.302, and 7.316 deal with the time for filing applications for leave to appeal to the Supreme Court. The proposals would (1) provide a time limit for filing applications for leave to appeal as cross appellant (MCR 7.302[D][2]), (2) eliminate delayed applications for leave to appeal, setting a time limit of 42 days, with late applications not accepted (MCR 7.302[C][1]-[4], 7.316[B]), and (3) set a shorter time limit for appeals involving

orders terminating parental rights (MCR 7.302[C][2])). There are nonsubstantive changes in MCR 7.205, 7.210, and 7.215, adding a reference to MCL 5.993(C)(1) (which sets the time limit for late applications in parental rights terminal cases), and adjusting references to applications to the Supreme Court.

The staff comment is published only for the benefit of the bench and bar and is not an authoritative construction by the Court.

A copy of this order will be given to the secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on these proposals may be sent to the Supreme Court clerk in writing or electronically by *August 1, 2002*. Clerk's Office, Michigan Supreme Court, P.O. Box 30052, Lansing, MI 48909, or MSC_clerk@jud.state.mi.us. When filing a comment, please refer to files **1999-50 and 2000-27**. Your comments and the comments of others will be posted on the Court's website, www.courts.michigan.gov/supremecourt.